

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Wireless Telecommunications Bureau
Request for Comment on the Construction
Requirements for Commercial Wide-Area
800 MHz Licensees Pursuant to *Fresno Mobile*
Radio, Inc. v. FCC

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PR Docket No. 93-144

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COMMENTS OF SOUTHERN COMPANY

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EXECUTIVE SUMMARY

Southern Company believes that the Commission must revise its construction standards for incumbent wide area 800 MHz SMR systems to make them comparable to the population-based construction standards which are applied to 800 MHz Economic Area licensees. The Commission's current rules for incumbent wide area systems are based on its site-by-site licensing rules which predate the adoption by Congress of the 1993 Budget Act. The 1993 Budget Act requires that the FCC establish comparable requirements for providers of substantially similar commercial mobile radio services. Nevertheless, the Commission has continued to retain the site-by-site construction standards, which require licensees to build out each channel for which they are licensed at each site by the end of their license term or face forfeiture of unconstructed channels. Up to this point the Commission has maintained that the difference in the two licensing schemes and the desire to avoid spectrum warehousing were a sufficient basis to impose disparate construction standards on these similarly situated CMRS providers. The United States Court of Appeals for the District of Columbia firmly rejected these two rationales in the *Fresno Mobile* case.

The 1993 Budget Act requires that the Commission adopt population-based construction standards for incumbent wide area SMRs. Southern believes that this can be achieved in a very straightforward and administratively convenient fashion. Southern recommends that the Commission require incumbent wide area 800 MHz SMR licensees to provide service coverage to one-third of the population in their service areas within three years and two-thirds of the population within five years consistent with the standard applied to EA licensees. Southern recommends also that the geographic area to which the population benchmarks will be applied should be the entire service area of the incumbent wide area SMR licensee as defined by the interference contours of its individually licensed sites. This type of approach has been used by the Commission in allowing incumbent wide area licensees to

apply for a single geographic license (under one call sign) and has also been recently applied to incumbent 900 MHz paging systems. Monitoring of compliance with the construction benchmarks can be accomplished in the same way that it presently is: by certification by the licensee at the appropriate time that it has in fact met the construction benchmark.

Southern believes that adoption of these Population Based Construction Standards will comply with the 1993 Budget Act's requirements for regulatory parity. It will enable incumbent wide area licensees to meet their construction obligations in a manner that is responsive to market demand and under similar economic burdens as their competitors. This will give real meaning to the Commission's commitment that "economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace."

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<i>Radio, Inc. v. FCC</i>)	

COMMENTS OF SOUTHERN COMPANY

Southern Company ("Southern"), through its undersigned counsel, submits these comments in response to the Request of the Wireless Telecommunications Bureau,¹ in the above-captioned proceeding. The Bureau has requested comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio licensees that operate wide-area systems in response to the remand by the U.S. Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc. v. FCC*.²

INTRODUCTION

The Commission has promulgated rules establishing disparate construction obligations for substantially similar commercial mobile radio services in the 800 MHz band. The Commission has based this disparity upon the manner in which the systems

¹ *Wireless Telecommunications Bureau Request for Comment on the Construction Requirements for Commercial Wide-Area 800 MHz Licensees Pursuant to Fresno Mobile Radio Inc. v. FCC*, DA 99-974, Public Notice, released May 21, 1999 ("FCC Public Notice").

² 165 F.3d 965, 970 (D.C. Cir. 1999) ("*Fresno*").

were licensed. Although the 1993 Budget Act³ requires that the FCC establish comparable technical requirements for providers of substantially similar commercial mobile radio services (“CMRS”), the Commission has provided 800 MHz Economic Area (“EA”) licensees far more flexible construction rules than are applied to their competitors. EA Licensees on the Upper 200 800 MHz channels, for example, are required to provide coverage to one-third of the EA’s population within three years of license grant; and within five years, they must provide coverage to two-thirds of the EA’s population (“Population-Based Construction Standards”).⁴ They are also required to construct 50 percent of their channels at at least one location. EA licensees on the lower 80 and General Category channels must cover the same population benchmarks in the same timeframe, but do not need to construct any minimum number of channels at any site.⁵ After covering two thirds of the population, an EA licensee will have met its regulatory burden for construction, and never needs to serve the remaining one-third of the population in its service area. Similar rules, providing Population-Based Construction Standards, have been applied to all other CMRS carriers such as 900 MHz SMRs,⁶ PCS,⁷ narrowband PCS,⁸ and cellular.⁹

Incumbent wide area licensees in the 800 MHz band, on the other hand, must construct each channel at each site for which they are authorized by the end of their

³ Section 6002(d)(3)(B), 1993 Budget Act, 107 Stat 312, 397.

⁴ 47 C.F.R. § 90.685(b); *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections (3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act, Competitive Bidding*, PR Docket No. 93-144, *Order*, 13 FCC Rcd 1533 (WTB 1997).

⁵ 47 C.F.R. § 90.685(b). This group of EA licensees may also elect to render “substantial service” in their markets within five years of initial license grant.

⁶ 47 C.F.R. § 90.665(c).

⁷ 47 C.F.R. § 24.203(a).

⁸ 47 C.F.R. § 24.103(a).

⁹ 47 C.F.R. §§ 22.946-47. *See also Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *Further Notice of Proposed Rulemaking (“Further NPRM”)*, 10 FCC Rcd 7970, ¶ 45 (1994).

construction schedule or face forfeiture of any unconstructed channels.¹⁰ These construction rules deny wide area licensees the flexibility to construct their systems in accordance with market demand in a manner similar to other CMRS carriers. It was Southern's challenge of these disparate regulatory requirements that resulted in the U.S. Court of Appeals for the District of Columbia's decision in *Fresno*,¹¹ remanding these disparate construction requirements to the FCC for reconsideration.

BACKGROUND

Southern's wholly-owned subsidiary, Southern Communications Services, Inc., d/b/a Southern LINC®, operates a digital, wide area SMR system classified as a CMRS under Commission regulations. It is the largest centrally switched state-of-the-art digital 800 MHz SMR system in the world, with an authorized service area of more than 120,000 square miles.¹² Sheriffs departments, emergency management agencies, school systems and businesses large and small—well over 100,000 users in all—daily rely on the Southern LINC® 800 MHz SMR system for critical communications.

Southern's wide-area SMR system employs Motorola's Integrated Digital Enhanced Network ("iDEN") technology,¹³ a digitally-enhanced, time division multiple access technology, which to date is the only commercially available digital 800 MHz SMR technology. This technology allows the transmission of six sets of voice communications simultaneously on a single channel, and central processing of the communications for efficient spectrum use. Southern's system provides voice dispatch service as well as full duplex telephone interconnect, short message service (similar to alphanumeric paging) and

¹⁰ 47 C.F.R. § 90.629(e).

¹¹ *Supra* note 2.

¹² Southern's 120,000-square mile system footprint includes all or part of 22 economic areas, but does not cover all 22 economic areas completely.

¹³ The identical technology is being used by Nextel.

data transmission capabilities, including internet services. Each of these functions can be accessed by using a single mobile or handheld radio unit.

Southern has been providing commercial service on the system since February 1996. Southern has invested over \$200 million in its wide-area system and has completely built out a coverage area of 120,000 square miles, exceeding all coverage requirements of any similar CMRS entity.

As Southern has extensively documented in previous proceedings, the process of constructing this advanced digital system over such a wide area was enormously complex.¹⁴ In order to provide service over its service area, Southern has constructed and is operating over 400 base radio stations. This enables Southern to make its advanced digital service available to over 90 percent of the approximately ten million people living within both the urban and rural parts of its service area. Southern has therefore already exceeded even the EA licensees' five-year benchmark of providing coverage to two thirds of the population in this service area. Nevertheless, application of the current site-by-site construction standard will require Southern to install every frequency for which it is licensed at every site regardless of the current level of demand for service at each site.

Although Southern had no alternative at the time but to seek site-by-site licensing,¹⁵ which the Commission has since acknowledged is completely unsuitable for systems of Southern's breadth and complexity,¹⁶ Southern must compete with other CMRS entities which enjoy the flexibility afforded by Population-Based Construction Standards. This clearly creates an uneven playing field, a fact that the Commission explicitly

¹⁴ Request for Waiver of Southern Company filed February 19, 1998, and Southern Company's Response to Request for Rejustification of Extended Implementation Authority, PR Docket No. 93-144 (filed July 15, 1996), incorporated herein by reference.

¹⁵ Southern's stations were licensed in April 1993. The Commission did not propose geographic licensing of 800 MHz SMR systems until October of the next year. *See Further NPRM* ¶ 12.

¹⁶ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8043 ¶ 96 (1994) ("CMRS Third Report and Order").

acknowledged when it subsequently abandoned site-by-site licensing for CMRS and moved to geographic area licensing to promote the competitive prospects of wide-area SMR systems.¹⁷

Southern has built and placed in service a wide area SMR system that provides advanced digital CMRS to the public in urban areas as well as rural areas overlooked by other CMRS providers. Southern's system provides true wide-area coverage, including coverage in the most rural areas of the South. Southern's customers in Collins, Mississippi and Cuthbert, Georgia have the same advanced digital service available to them on Southern's system as customers in Atlanta, Georgia and Birmingham, Alabama. This is particularly important to the public safety community which Southern serves.¹⁸

Southern is committed to continuing to provide its entire service area with an advanced communications system that meets the unique needs of public utilities, federal, state, and local governments and emergency management agencies, including law enforcement and ambulance services.¹⁹ However, Southern needs the flexibility enjoyed by its competitors to continue to add capacity to its system in an economically rational manner based on market demand.

DISCUSSION

Southern believes that disparate construction requirements are prohibited as a matter of law. The 1993 Budget Act mandated that the FCC establish a uniform regulatory

¹⁷ *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972, ¶ 9 (1997) ("Memorandum Opinion and Order on Recon.").

¹⁸ In granting Southern's Request for Waiver, *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, DA 98-2496, *Memorandum Report and Order*, 14 FCC Rcd 1851 (1998), the Wireless Telecommunications Bureau cited as a "unique circumstance" the "provision of service over an unusually large area to a substantial number of public safety users. *Id.* ¶ 10. The Bureau went on to note that "Southern's system provides interoperability among participating [public safety] agencies, which the Commission has recognized as one of the most important public safety needs" *Id.* ¶ 13.

¹⁹ In the immediate aftermath of Hurricane Opal, Southern's system was the only telephone service operating in parts of the Alabama and Florida coast where wireline and cellular service were disabled.

regime for all commercial mobile services. Section 6002(d)(3)(B) directed the FCC to change its rules to assure that “substantially similar” mobile services are subject to “comparable” technical requirements.²⁰ The House Report accompanying the legislation states unequivocally that the changes in the regulatory regime are intended to establish “regulatory parity,” to establish “uniform rules to govern the offering of all commercial mobile services,” and “to provide that services that provide equivalent mobile services are regulated in the same manner.”²¹ In this instance, Congress has spoken with an unusually clear and unmistakable voice to establish a level regulatory playing field for commercial mobile services.

The FCC acknowledged Congress' clear command in its rulemaking proceedings implementing the 1993 Budget Act. The Commission stated that its CMRS Second Report and Order “reflects the Commission's efforts to implement the congressional intent of creating regulatory symmetry among similar mobile services.”²² Among other things, the Commission classified all SMR licensees who provide interconnected service as CMRS providers.²³ The Commission explained that “[t]his approach will result in CMRS classification for any wide-area SMR that intends to offer for-profit interconnected service, as we expect most such systems will do. *This is consistent with Congress's goal and the views of most commenters that SMR's providing interconnected service on a competitive basis with cellular carriers should be regulated similarly to cellular carriers.*”²⁴

²⁰ 1993 Budget Act, 107 Stat. 312, 397.

²¹ H.R. Rep. No. 103-111 at 259 (1993), *reprinted in* 1993 U.S.C.C.A.N. at 586; *see also* H.R. Conf. Rep. No. 103-213 at 498 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1088, 1187.

²² *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, ¶ 2 (1994) (“CMRS Second Report and Order”).

²³ *CMRS Second Report and Order* ¶ 90.

²⁴ *Id.* ¶ 91 (emphasis added).

The Commission stated in its Third Report and Order in this docket that the "broad goal" of the Budget Act was "to ensure that economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace."²⁵ Consistent with this goal, the Commission determined that all CMRS licensees – paging, SMR, PCS and cellular – are actual or potential competing services and therefore should be regarded as "substantially similar" for the purpose of determining whether the statutory requirement of regulatory parity applies.²⁶ Specifically, the Commission found that 800 MHz SMR licensees are among the class of "substantially similar" CMRS services entitled to comparable regulatory treatment.²⁷

The Commission further found that population-based construction coverage standards are a necessary element of establishing "comparable" technical requirements for 800 MHz SMR licensees.²⁸ The Commission granted Population-Based Construction Standards for the new EA licensees. However, the Commission did not grant Population-Based Construction Standards to incumbent wide-area 800 MHz SMR licensees, notwithstanding the fact that incumbent wide-area 800 MHz SMR licensees are clearly among the class of "substantially similar" service providers entitled to "comparable" regulatory treatment under the statute.

There can be no rational basis for singling out incumbent wide-area 800 MHz SMR licensees as the only CMRS providers that are not entitled to Population-Based

²⁵ *CMRS Third Report and Order* ¶ 4.

²⁶ *Id.* ¶¶ 10-14.

²⁷ *Id.* ¶ 94; see also *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band*, PR Docket No. 93-144, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of proposed Rulemaking*, 11 FCC Rcd 1463, ¶ 102 (1995) ("*First Report and Order*"). There can be no serious dispute that Southern's wide-area system is "substantially similar" to EA systems and other CMRS providers. Southern has assembled a wide-area 800 MHz system comprised of hundreds of overlapping single sites covering more than 120,000 square miles across 22 economic area's in four states in the southeastern United States. Southern's system is interconnected with the public switched telephone network.

²⁸ *CMRS Third Report and Order* ¶ 179.

Construction Standards. Previously, the Commission proffered two reasons why wide area systems should be treated differently: (1) because they were licensed on a site-by-site basis, and (2) because competitive bidding reduces the incentive for spectrum warehousing.²⁹ Both of these arguments were resoundingly rejected by the D.C. Circuit in *Fresno*.³⁰ With regard to the manner of licensing, the Court found that the FCC had “elevate[d] form over function.”³¹ Indeed, just like an EA licensee, incumbent wide-area SMR licensees like Southern are seeking authority to construct hundreds of sites through their licensed geographic area, not simply a single site, as the Commission had suggested. The manner in which the wide-area SMR services were licensed is utterly irrelevant to the Congressional mandate that the services be regulated in a comparable manner.³² With regard to the Commission’s warehousing argument, the Court stated “This is a foolish notion that should not be entertained by anyone who has had even a single undergraduate course in economics.”³³

The Commission long ago concluded that site-by-site construction requirements are inappropriate for geographic area systems.³⁴ Under those old site-by-site rules, 800 MHz SMR providers (like Southern) deploying wide-area systems were required to aggregate and construct contiguous single sites. As the *Fresno* Court noted, that construction requirement is not comparable to the construction requirement facing EA licenses: “[a]n EA licensee will never have to provide service to more than two thirds of its market, while a wide-area incumbent offering the same service will be required to cover its entire service

²⁹ Brief of Respondent

³⁰ *Fresno* at 969.

³¹ *Id.*

³² Congress's intent was to establish "uniform rules to govern the offering of all commercial mobile service," and "to provide that services that provide equivalent mobile services are regulated in the same manner." H.R. Rep. No. 103-111 at 259 (emphasis added).

³³ *Fresno* at 969.

³⁴ CMRS Third Report and Order ¶ 179.

area within two years.”³⁵ Because EA licensees do not have to serve the unprofitable precincts within their licensed service areas, they have a “permanent advantage” over their wide area competition.”³⁶

Population- Based Construction Standards enable EA licensees to commit investment dollars in response to market forces – such as the size of its customer base and the projected return on its investment. Wide-area 800 MHz SMR licensees, by contrast, are subject to site-by-site construction rules, which require the licensee to build out every frequency at every licensed site, or face cancellation of its license for each frequency not constructed.

The different standards translate into large economic differences. Under the population-based standard applicable to EA licenses, Southern would not be required to make significant immediate infrastructure investment, since Southern already provides service to over 90 percent of the population in its service area. Under existing site-by-site construction rules, however, Southern would have to spend several hundred million dollars to complete construction of every channel in its licensed system at every location, or Southern would lose its unconstructed authorizations. Regulation compels that investment, not market forces. Such regulation contradicts the “broad goal” of the 1993 Budget Act as stated by the FCC; “economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace.”³⁷

At the end of the day, there simply can be no legitimate justification for discriminating against incumbent wide-area SMR providers by creating a single sub-class of CMRS provider which is not entitled to population-based construction standards. The Commission's previous attempt to do so was summarily thrown out by the D.C. Circuit; it

³⁵ *Fresno* at 969.

³⁶ *Id.*

³⁷ *CMRS Third Report and Order* ¶ 4.

is abundantly clear that any future attempt to do so will meet the same fate. The fact of the matter is that Congress has, in an unusually clear and unmistakable manner, mandated that all CMRS providers must be regulated in the same manner. It is abundantly clear that this mandate means, *inter alia*, that incumbent wide-area 800 MHz SMR providers are entitled to the same kind of population-based construction standards as the rest of the CMRS industry.

PROPOSED CONSTRUCTION REQUIREMENTS

For the reasons discussed above – because the 1993 Budget Act requires it and because it is in the public interest – the Commission should adopt construction standards for wide-area licensees similar to those imposed on EA SMR licensees.

The Commission has solicited proposals for such comparable construction requirements that would “balance the need to provide wide-area licensees with construction requirements that are not unduly burdensome with the need to ensure that wide-area licensees do not warehouse spectrum or unreasonably delay service to the public.”³⁸ Fortunately, the Commission already has a model of such requirements in place: the Commission’s rules for 800 MHz EA licensee construction – rules which the Commission has already determined are in the public interest.³⁹ These rules can easily be applied to wide-area licensees, without creating a significant administrative burden for the Commission. Accordingly, Southern believes the Commission should require wide-area licensees to construct their systems to provide coverage to one third of the population

³⁸ *FCC Public Notice* at 2.

³⁹ *See First Report and Order* ¶ 104, *Memorandum Opinion and Order on Recon.* ¶¶ 80-82. These rules were designed to prevent spectrum warehousing and service delay by EA licensees; applying the same standard to wide area licensees will likewise prevent such problems in wide area systems. As the Commission has stated, “...we do not agree that our five-year construction requirement will result in or reward spectrum warehousing. The five-year requirement assures that geographic licensees will promptly build-out and provide service.” Whether the geographic area is an EA or a wide area, the Commission’s construction rules can balance regulatory burdens with the public interest demands for efficient spectrum use and prompt delivery of service.

within three years and two thirds of the population within five years. The interference contours of the wide area licensee's individually licensed sites should define the relevant "geographic area" to be covered within the construction period.⁴⁰

If the Commission decides to apply the population based standards as recommended here, the issue of when the construction time clock begins is not of particular concern to Southern; Southern already exceeds the two-thirds coverage requirement. Nevertheless, because of the unique circumstances here, involving extended proceedings before the Commission and a court challenge to the Commission's site-by-site construction standard, Southern believes it would be appropriate to apply this new standard prospectively from the date the Commission completes this proceeding.

In making recommendations, the Commission has asked commenters to take into account the difference in the way in which the Commission has licensed wide-area 800 MHz systems (*i.e.*, site-specific licensing) and geographic area systems. Both from a legal and a practical standpoint, Southern believes that this distinction is irrelevant to the construction standard issue. Wide-area SMR licensees have an identifiable wide area contour which is analogous to an EA. The population within this contour can be quantified (for example on a county-by-county basis) and population coverage benchmarks applied without difficulty. The fact that the individual sites within the service contour were licensed individually does not mean that a population-based coverage requirement cannot be applied. It simply means that the contour of the geographic area will be distinct for each incumbent wide-area licensee. Furthermore, the Commission already has mechanisms in place to allow licensees to convert from site-specific licenses to a single

⁴⁰ Southern is not suggesting that wide-area licensees have the same ability to move their individual licensed sites anywhere within this defined geographic area that an EA licensee has. Rather, the wide area licensee would presumably only be able to move an individual site based on being able to obtain frequency coordination and licensing of the new site. Accordingly, a population-based construction standard would not adversely affect other licensees or enable the wide area licensee to acquire any "white space."

geographic license based upon “overlapping interference contours.”⁴¹ Even though the geographic area of each system will be distinct, the same type of construction standard can be applied to wide area site-by-site licensees, creating the legally mandated regulatory parity.

However, the fact that the sites were originally licensed on a site-by-site basis does make it nearly impossible for an incumbent wide area licensee to meet the requirement to construct fifty percent of their licensed channels at one site (the “50 percent requirement”). Since site-by-site licensees do not have a uniform number of channels at each site, and do not have the right to relocate other licensees within their service areas, this 50 percent requirement could not be sensibly applied to incumbent wide area licensees.⁴² From a technical standpoint, the 50 percent requirement also makes little sense, particularly when applied to a technology like iDEN which optimizes spectrum-efficiency by using distributed low power sites rather than concentrating channels at one high power site. Therefore the requirement should not be imposed on wide area licensees.

In addition, the monitoring of compliance with construction benchmarks by wide area licensees need not burden the Commission any more than does EA licensee construction compliance and can be done in a similar manner. Like EA licensees, at the end of the relevant construction period, the wide area licensee can certify compliance with its construction obligations in writing to the Commission. In the case of incumbents, this could include a system contour map as well, designating the geographic coverage of the

⁴¹ *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1514 ¶ 88 (1995). See also *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99-98 ¶ 38, (1998).

⁴² This Commission has also not applied this particular requirement to EA licensees operating on the Lower 80 or General Category channels or to 900 MHz EA licensees. 47 C.F.R. § 90.685(c) and 47 C.F.R. § 90.665(c).

system in question and relevant population figures on a county-by-county (or partial county) basis.

As detailed above, the 1993 Budget Act requires that the Commission modify or terminate its regulations “as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services . . .”⁴³ The regulations governing construction of 800 MHz EA licensees are currently codified at 47 C.F.R. § 90.685, *Authorization, construction and implementation of EA licenses*. The proposed wide-area construction regulations in **Exhibit A** mirror the Commission’s EA construction standards and provide the same service and warehousing safeguards for wide area systems as the Commission has established for EA systems, providing comparable regulations for a substantially similar common carrier service.

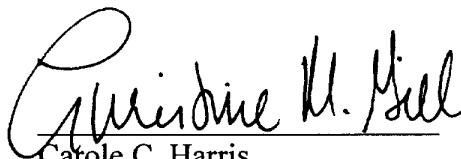
The proposed rules, almost identical to the Commission’s existing EA rules, provide the same “flexibility” and “incentive to construct facilities and provide service promptly” for wide area systems. Finally, the proposed rules would meet the Commission’s obligations under the Balanced Budget Act and remove a disparate regulatory burden limiting wide area systems’ ability to compete and provide service to the public.

⁴³ Section 6002 (d)(3)(B), 1993 Budget Act, 107 Stat. 312, 397.

CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern Company urges the Commission to consider these Comments and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christine M. Gill".

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Dated: July 12, 1999

EXHIBIT A

PROPOSED CONSTRUCTION REGULATIONS FOR WIDE AREA LICENSEES

Based upon 47 C.F.R. § 90.685. Deletions are ~~stricken through~~. Additions are underlined.

(a) Incumbent wide-area EA licenses in the ~~806-821/851-866~~ 800 MHz band will be issued for a term not to exceed ten years. ~~Additionally, EA licensees generally will be afforded a renewal expectancy only for those stations put into service after August 10, 1996.~~

(b) EA Incumbent wide-area licensees (as defined in Rule Section 20.3) in the ~~806-821/851-866~~ 800 MHz band must, within three years of the ~~grant of their initial license~~ [effective date of the new construction requirements] construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA incumbent wide area-based service area. Further, each incumbent wide-area licensee must provide coverage to at least two-thirds of the population of the EA- incumbent wide area-based service area within five years of the ~~grant of their initial license~~ [effective date of the new construction requirements]. ~~Alternatively, EA licensees in Channel blocks D through V in the 806-821/851-866 MHz band must provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: "Service which is sound, favorable, and substantially above a level of mediocre service."~~

~~(c) Channel use requirement. In addition to the population coverage requirements described in this section, we will require licensees in Channel blocks A, B and C in the 816-821/861-866 MHz band to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA based service area within three years of initial license grant and to retain such channel usage for the remainder of the construction period.~~

(d) ~~An EA~~ Wide-area licensee's failure to meet the population coverage requirements of paragraph (b) ~~and (c)~~ of this section, will result in forfeiture of the entire EA wide area license. Forfeiture of the EA wide area license, however, would not result in the loss of any constructed facilities authorized to the licensee prior to the ~~date of the commencement of the auction for the EA licenses~~ [effective date of the new construction standards].

CERTIFICATE OF SERVICE

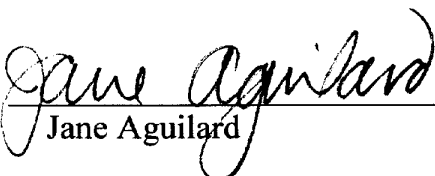
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